8.8.1002

(4)

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

W.P. NO. 2890 2004

Petitioner : Fazal Haque, S/o. Abdul Haque, aged about 37 years, Bus Operator, R/o. Kharsia Naka, Ambikapur, Distt. Surguja.

Versus

Respondents

1. State Transport Appellate Tribunal, Raipur, C.G.
2. S.T.A. (State Transport Authority), Chhattisgarh, Raipur (C.G.)
3. Mohammad Alim, S/o. Mohammad Ayub, Bus Operator, R/o. Kharsia Naka, Ambikapur, Dist. Surguja(C.G.)
4. Mohhamad Kayum, S/o. Mohammad Ayub, Bus Operator, R/o. Bargidih, Distt. Surguja (C.G.).

P.R. No. 2472/04
Presented by Shri R.P. Gupta
dt. 10-8-04

Received
10/8/04
Clerk to A.G. Bilaspur

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक WP 2890/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

24.09.2004

Shri B.P. Gupta, counsel for the petitioner.

Shri Sanjay S. Agrawal, Govt. Adv. for the State.

Shri B.K. Rawat, counsel for respondent No. 3 & 4.

Heard.

The petitioner has preferred this writ petition under Article 226 / 227 of the Constitution of India being aggrieved by the order dated 08.06.2004 (Annexure P-4) passed by respondent No.1- State Transport Appellate Tribunal, Raipur in MJC No.2/04 whereby the learned Tribunal after reviewing its earlier order dated 24.5.2004 (Annexure P-3) passed in Revision No.462/03, set aside the same.

Brief facts leading to filing of this petition are that the petitioner herein had applied for a regular permit to ply his bus on the route Ambikapur to Akamba. The State Transport Authority while accepting the request of the petitioner invited objections from the concerned and interested persons. In response to that respondent No.3 & 4 herein filed their objections admittedly relating to the timings of bus to be operated on the said route. Learned State Transport Authority after considering the objections raised by respondent No.3 & 4 vide its order dated 02.08.2003 allowed the application of the petitioner for plying the bus on the said route and accordingly, a permit was granted to him with slight change in time schedule, which reflects from the second page of the order that the State Transport Authority after considering the objections reached to the conclusion that appropriate starting time from Ambikapur bus stand is 13.35 instead of 13.45, as by that change first

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bus operator i.e. after the petitioner, will get 35 minutes time gap and second bus operator will get 1 hrs 10 minutes time gap. It was further mentioned in the order that the starting time from the Bus Stand Bageecha will be 16.15 instead of 16.45 in order to keep the time gap of 1 hrs and ultimately held that after making this modification or change in the time schedule, rest of the objections of the objectors were rejected. Learned State Transport Authority further observed that the proposed route falls on the villages and backward area and if this permit is allowed then one extra permanent bus will be available to those villagers and backward area people. However, while typing the time schedule it appears that the starting time from Bageecha was wrongly typed as 16.55 instead of 16.15 and that perhaps gave the opportunity to respondent Nos.3 & 4 to file revision and accordingly, they preferred a revision petition before the State Transport Appellate Tribunal.

The State Transport Appellate Tribunal vide its order dated 24.5.2004 decided the revision and rejected all the grounds taken by respondent No.3 & 4. In the last paragraph of the order it was observed by the tribunal that State Transport Authority in fact granted permit with a time schedule leaving Bageecha Bus Stand at 16.15 instead of 16.55, but due to some typographical mistake it has been typed out as 16.55 instead of 16.15 and therefore, directed to amend the starting timing of Bageecha from 16.55 to 16.15. With this modification the revision was dismissed.

Provisions of sub-rule (4) of Rule 143 of M.P. Motor Vehicles Rules, 1994 envisages that "*the tribunal may after following the*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

procedure prescribed in sections 89 and 90 of the Act and after further enquiry, if any, as it may consider necessary confirm, vary or set aside the order against which the appeal or revision is preferred or may pass such other order in relation thereto as it deems fit and shall make an order accordingly". Therefore, sub-rule (4) is very clear in its term that the learned Tribunal is entitled to vary the terms of permit and accordingly, those terms were varied finding that starting timing from Bageecha has incorrectly been typed out as 16.55 instead 16.15, however the matter did not end there. Respondent No.3 & 4 still being dissatisfied moved a review application before the learned State Transport Appellate Tribunal for reviewing the order-dated 24.5.2004. On this application learned Tribunal surprisingly adopted the procedure, unknown to our judicial system and quashed the order-dated 02.08.2003.

First of all there is no provision for reviewing its order by the State Transport Appellate Tribunal in the Rule itself, secondly learned State Transport Appellate Tribunal without giving notice to the affected party allowed the review petition and that too, to the extent that the permit of the petitioner was cancelled. Therefore, in view of the above, the order passed by the learned State Transport Appellate Tribunal cannot be allowed to stand not being in conformity with the relevant law.

Learned counsel for respondent 3 & 4 argued that vide order dated 24.5.2004 timings were changed by the Tribunal, which was not permissible, timing could not have been changed unless other effected permit holders were given opportunity of hearing, but I do

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

not find any force in this argument for the reason that in the first instance, as mentioned above, no review lies against the order passed by the State Transport Appellate Authority. Secondly, perusal of the orders of the State Transport Authority and Tribunal reveal that the State Transport Authority in the previous paragraph of the order has categorically mentioned that the starting time from Bageecha must be 16.15 in order to meet the objections of respondent No.3 & 4 and to redress their grievances, therefore, this point was already considered by the State Transport Authority. However, while typing time schedule in the last paragraph of the order due to typographical mistake the starting time from Bageecha was typed out as 16.55 instead of 16.15 and learned State Transport Appellate Tribunal simply rectified that mistake by order dated 24.5.2004, that was within the jurisdiction of the Tribunal, as mentioned under sub-rule (4) of Rule 143.

Now coming to another point raised by Shri Rawat that other operators' right will be affected on account of this time schedule. But in this argument also I do not find any force for the reason that when the original objections were invited, but except respondent No.3 & 4 no other bus operator had filed any objection and further the time schedule given to the petitioner was not substantially changed which affects the right of the other permit holders. The time schedule was fixed by the Authority after hearing the objectors including respondent No.3 & 4 and due to typographical mistake starting time from Bageecha was typed out as 16.55 instead of 16.15.

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आदेश पत्रक

मामला क्रमांक W.P 2890/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Therefore, for the aforesaid reasons the petition of the petitioner deserves to be allowed and accordingly, it is allowed. The impugned order dated 08.06.2004 (Annexure P-4) passed by respondent No.1 is hereby quashed and the order of the State Transport Authority dated 02.08.2003 (Annexure P-1) granting permit to the petitioner is restored subject to the modification made by the learned State Transport Appellate Tribunal in its order-dated 24.5.2004 (Annexure P-3). Parties are left to bear their own cost. Certified copy as per rules. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan/Sunita

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